

June 1, 2011

PROPOSED AMENDMENTS TO
REGULATIONS GOVERNING

**LABOR COMPLIANCE PROGRAMS and
COMPLIANCE MONITORING AND ENFORCEMENT
BY DEPARTMENT OF INDUSTRIAL RELATIONS**

CALIFORNIA CODE OF REGULATIONS

TITLE 8, CHAPTER 8, SUBCHAPTERS 4 and 4.5

Contents

Subchapter 4. Labor Compliance Programs

Article 1. Operation of Labor Compliance Program and Contracts Subject to Labor Compliance Program Jurisdiction

* * *

§16423. Approved Labor Compliance Program Required by Statute.

* * *

Subchapter 4.5. Compliance Monitoring and Enforcement by Department of Industrial Relations [New]

Article 1. Notices, Fees, and Fee Waivers.

§16450. Applicability.

§16451. Notice of Projects Subject to Fees.

§16452. Fees for Compliance Monitoring and Enforcement by Department of Industrial Relations.

§16453. Voluntary Payment of Fees for Compliance Monitoring and Enforcement by Department of Industrial Relations in Lieu of Enforcing Labor Compliance Program.

§16454. Payment of Fees for Compliance Monitoring and Enforcement by Department of Industrial Relations by Awarding Body that Elects to Comply with Requirements of Section 1771.55(a) of the Labor Code.

§16455. Fee Waivers.

Article 2. Compliance Monitoring by Labor Commissioner [No changes]

*Proposed Amendments to Regulations governing LCPs and Compliance Monitoring
by Department of Industrial Relations [June 1, 2011 draft]*

*** Proposed new language is underlined. Proposed deletions are lined out.**

Subchapter 4. Labor Compliance Programs

Article 1. Operation of Labor Compliance Program and Contracts Subject to Labor Compliance Program Jurisdiction

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§16423. Approved Labor Compliance Program Required by Statute.

(a) Whenever an Awarding Body is required by statute to enforce or contract to enforce a Labor Compliance Program that contains or meets the requirements of Labor Code section 1771.5, the Awarding Body must have its own program that has been approved by the Director pursuant to section 16425 below, unless it either (1) fully contracts out its responsibilities and decision-making authority to a third party program that has been approved by the Director pursuant to section 16426 below, or (2) has agreed to pay a fee to the Department of Industrial Relations for monitoring and enforcement pursuant to Subchapter 4.5 below.

(b) The governing board of any Awarding Body that is required to enforce a Labor Compliance Program under subpart (a) above shall make a written finding that the Awarding Body has

(1) established its own Labor Compliance Program in accordance with the requirements of Labor Code Section 1771.5(b) and this subchapter;

(2) has contracted with a third party that has been approved by the Director to operate a Labor Compliance Program in accordance with the requirements of Labor Code Section 1771.5(b) and this subchapter; or

(3) has entered into an agreement with the Labor Commissioner for monitoring and enforcement pursuant to Subchapter 4.5 below.

Copies of the finding required by this subpart (b) together with (A) notice of whether or not the Awarding Body intends to initiate and enforce its Labor Compliance Program either for (i) all public works projects in which the Awarding Body participates or (ii) only those public works projects in which the Awarding Body participates that are subject to the notice, fees, and fee waiver provisions of Article 1 of Subchapter 4.5 (beginning with section 16450) below, and, if applicable, (B) notice of any contract or agreement with a third party to operate a Labor Compliance Program shall be provided promptly to the Director and prior to certifying to any

other entity that the Awarding Body has complied with the statutory requirement to have a Labor Compliance Program.

(c) For purposes of these regulations, an approved program refers to the entity that has applied for and received approval by the Director based on a consideration of the factors in sections 16425, 16426, or 16427 below, and not to that entity's manual or methodology for conducting labor compliance enforcement.

(d) Unless otherwise required by statute, an Awarding Body is not required to have separate Labor Compliance Programs, and a third party Labor Compliance Program is not required to have separate approvals from the Director for different types of projects or funding sources, provided that (1) the Awarding Body has provided all notices required by subpart (b) above, (2) the Labor Compliance Program has timely filed all reports required by this subchapter, and (3) the Director has not otherwise limited the approved scope of operation for the Labor Compliance Program.

(e) The limited exemption from payment of prevailing wages provided by Labor Code Section 1771.5(a) shall *not* apply unless the Awarding Body elects to initiate and enforces a Labor Compliance Program for ~~all public works projects in which the Awarding Body participates~~ every public works project under the authority of the Awarding Body.

(f) A list of statutes that require Awarding Bodies to have a Labor Compliance Program as a condition of project authorization, project funding, or use of specified contracting authority shall be maintained on the Department of Industrial Relations' website.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Section 1771.5, Labor Code.

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Subchapter 4.5 Compliance Monitoring and Enforcement by Department of Industrial Relations

Article 1. Notices, Fees, and Fee Waivers.

§16450. Applicability.

The regulations in this subchapter shall apply to all of the following:

(a) any public works project ~~awarded on or after August 1, 2010~~ that is funded in whole or in part from any bond issued by the state to fund public works projects, and for which the public works contract is awarded on or after January 1, 2012, or the effective date of these regulations, whichever is later;

(b) any public works project that is subject to a statutory requirement to pay a fee to the Department of Industrial Relations for the monitoring and enforcement of prevailing wage requirements on that project, and for which the public works contract is awarded on or after January 1, 2012, or the effective date of these regulations, whichever is later;

(c) any public works project that is subject to a statutory requirement to operate or enforce a labor compliance program or to contract with a third party to operate or enforce a labor compliance program, and for which, in lieu of contracting with another third party, the Awarding Body agrees to pay and the Labor Commissioner agrees to receive a fee for the monitoring and enforcement of prevailing wage requirements on that project; and

(d) all other public works projects undertaken by an Awarding Body that has elected to comply with the requirements of Labor Code Section 1771.55(a).

NOTE: Authority cited: Sections 54, 55, 1771.3, 1771.55 and 1773.5, Labor Code. Reference: Sections 17250.30 and 81704, Education Code; Section 6531, Government Code; Sections 1771.3, 1771.5, 1771.55, 1771.7, 1771.75, 1771.8, 1771.85, and 1771.9, Labor Code; and Sections 6804, 20133, 20175.2, 20193, 20209.7, 20688.6, and 20919.3, Public Contract Code.

§16451. Notice of Projects Subject to ~~Fees~~Requirements of Subchapter.

(a) The Awarding Body shall provide the Director with notice of any project that is subject to the

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requirements of this subchapter as follows:

- (1) For any project funded in whole or in part from a bond issued by the state to fund public works projects, the Awarding Body shall provide notice at the time it receives notice that the funding agency has awarded or released the funds, whichever is later.
- (2) For any other project that is not subject to subpart (1) above, the Awarding Body shall provide notice at the time it awards the design-build contract, if using design-build contracting authority, or at the time it awards the initial prime contract, if using any other contracting authority.
- (3) The notice required by this section shall be sent to the Office of the Director of Industrial Relations, Attention: Special Assistant, 455 Golden Gate Avenue, 10th Floor, San Francisco, CA 94102, and shall include the following information:
 - (A) The date of the contract;
 - (B) The names and contact information for the parties to the contract;
 - (C) A brief description of the work to be performed;
 - (D) The precise location or locations where the work will be performed;
 - (E) The estimated starting date of work on the project;
 - (F) The source or sources of any state-issued public works bond funding for the project, and the amounts paid or estimated to be paid by each source of that funding;
 - (G) The estimated total project costs, including the gross amount of every contract for "public works" within the meaning of sections 1720 and following of the Labor Code, but not including ~~exclusive of~~ amounts paid for land acquisition or for internal costs or contracts that are not for public works within the meaning of sections 1720 and following of the Labor Code; and
 - (H) The name, title, and contact information for the Awarding Body representative who will be responsible for carrying out the Awarding Body's

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obligations under this subchapter.

(4) In the case of an ongoing project for which the Awarding Body is seeking to pay a fee to the Department of Industrial Relations for monitoring and enforcement in lieu of contracting with a third party for continued enforcement of a labor compliance program, the Awarding Body shall comply with the requirements of section 16453 below.

(b) The Director may provide for the submission of a single notice to comply with the requirements of subpart (a) above and the notification requirements of Section 1773.3 of the Labor Code.

(c) The Call for Bids, Design-Build Request, and the contract or purchase order shall contain appropriate language concerning the requirements of Division 2, Part 7, Chapter 1 of the Labor Code and shall also state that the project is subject to the requirements of this subchapter, including the obligation to furnish certified payroll records directly to the Labor Commissioner in accordance with section 16461 below.

(d) On each job site that is subject to compliance monitoring and enforcement by the Department of Industrial Relations under this subchapter, the Awarding Body shall post or require the prime contractor to post a Notice containing the following language:

"This public works project is subject to monitoring and investigative activities by the Compliance Monitoring Unit (CMU) of the Division of Labor Standards Enforcement, Department of Industrial Relations, State of California. This Notice is intended to provide information to all workers employed in the execution of the contract for public work and to all contractors and other persons having access to the job site to enable the CMU to ensure compliance with and enforcement of prevailing wage laws on public works projects.

"The prevailing wage laws require that all workers be paid at least the minimum hourly wage as determined by the Director of Industrial Relations for the specific classification (or type of work) performed by workers on the project. These rates are listed on a separate job site posting of minimum prevailing rates required to be maintained by the public entity which awarded the public works contract. Complaints concerning nonpayment of the required minimum wage rates to workers on this project may be filed with the CMU at any office of the Division of Labor Standards Enforcement (DLSE).

Local Office Telephone Number: _____

*Proposed Amendments to Regulations governing LCPs and Compliance Monitoring
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“Complaints should be filed in writing immediately upon discovery of any violations of the prevailing wage laws due to the short period of time following the completion of the project that the CMU may take legal action against those responsible.

“Complaints should contain details about the violations alleged (for example, wrong rate paid, not all hours paid, overtime rate not paid for hours worked in excess of 8 per day or 40 per week, etc) as well as the name of the employer, the public entity which awarded the public works contract, and the location and name of the project.

“For general information concerning the prevailing wage laws and how to file a complaint concerning any violation of these prevailing wage laws, you may contact any DLSE office. Complaint forms are also available at the Department of Industrial Relations website found at www.dir.ca.gov/dlse/PublicWorks.html.”

NOTE: Authority cited: Sections 1771.3, 1771.55 and 1773.5, Labor Code. Reference: Sections 17250.30 and 81704, Education Code; Section 6531, Government Code; Sections 1771.3, 1771.5, 1771.55, 1771.7, 1771.75, 1771.8, 1771.85, 1771.9, 1773.2, and 1773.3, Labor Code; and Sections 6804, 20133, 20175.2, 20193, 20209.7, 20688.6, and 20919.3, Public Contract Code.

§16452. Fees for Compliance Monitoring and Enforcement by Department of Industrial Relations.

~~(a) The fee for services under this subchapter shall be as follows:~~

~~(1) For any project subject to the requirements of this subchapter solely by reason of the receipt of state issued bond funds, the fee shall be one fourth of one percent of the funds released by the funding agency for the project;~~

~~(2) For any other project, the fee shall be equal to the greater of the following:~~

~~(A) one fourth of one percent of the proceeds of any state issued bond funds that have been provided for the project, or~~

~~(B) one fourth of one percent of the total project costs.~~

~~(3) For purposes of this subchapter, the term “total project costs” shall include all costs that are incident to the construction of a public works project, including but not limited to financing, engineering, architecture, surveying, testing, legal, and construction management expenses, but shall not include amounts paid for land acquisition.~~

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~~(4) In the case of an ongoing project for which the Awarding Body is seeking to pay a fee to the Department of Industrial Relations for monitoring and enforcement in lieu of contracting with a third party for continued enforcement of a labor compliance program, the Department may agree to accept a lesser or pro rata fee, depending upon the projected volume of monitoring and enforcement that remains to be done on the project.~~

~~(b) The fees required by this section shall be paid at the time the Awarding Body is required to provide the notice specified in section 16451(a) above and, if applicable, at the time of each successive release of state issued bond funding from which an additional fee is due.~~

~~(c) For projects subject to the payment of a fee based on total project costs under subparts (a)(2) and (a)(3) of this section, the fee shall be calculated based on the total estimated costs as determined at the time the Awarding Body is required to provide notice under section 16451(a)(2) above. This fee shall constitute the entire fee due for the project and shall not be subject to further augmentation or reduction except as follows:~~

~~(1) The Department may require verification of items included in the estimate and may require the fee to be recalculated if the Awarding Body's estimate was not based on total project costs as defined in subpart (a)(3) of this section or was otherwise inaccurate.~~

~~(2) If the Awarding Body receives state issued bond funding that makes it subject to a fee in excess of one quarter of one percent of the total project costs, the Awarding Body shall pay the additional fee due up to the maximum fee specified in subpart (a)(2) of this section.~~

~~(3) If the Department receives duplicative payments that cause the amounts paid to exceed the maximum fee due under subpart (a)(2) of this section, the Department shall refund the excess amount.~~

(a) The Department shall charge a fee for purposes of recovering its reasonable and necessary costs that are directly related to the monitoring and enforcement of prevailing wage requirements on a project that is subject to the fee.

(b) For projects that use funds from any bond issued by the state to fund public works projects,

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the maximum fee that is payable from those bond proceeds and the manner for billing and collecting that fee shall be in accordance with standards approved by the Department of Finance and any constitutional or statutory standards and limits governing the bond in question. These standards may provide for the direct billing and payment of fees by the state board, commission, department, agency, or official that awards or administers the bond funding on the state's behalf.

(c) The maximum fee assessed for any project shall not exceed one-quarter of one percent of the total amount of the total project costs, including the gross amount of every contract for "public works" within the meaning of sections 1720 and following of the Labor Code, but not including amounts paid for land acquisition or for internal costs or contracts that are not for public works within the meaning of sections 1720 and following of the Labor Code.

(d) Fees collected pursuant to this section shall be deposited in the State Public Works Enforcement Fund and shall be used only for the monitoring and enforcement of prevailing wage requirements on projects subject to the fee.

~~(e) The Director may enter into agreements with any agency that awards state bond funds for public works projects for the purpose of receiving notice and direct payment of the fee specified in subpart (a)(1) or (a)(2)(A) above at the time the funds are released.~~

NOTE: Authority cited: Sections 1771.3, 1771.55 and 1773.5, Labor Code. Reference: Sections 17250.30 and 81704, Education Code; Section 6531, Government Code; Sections 1771.3, 1771.5, 1771.55, 1771.7, 1771.75, 1771.8, 1771.85, 1771.9, 1773.2, and 1773.3, Labor Code; and Sections 6804, 20133, 20175.2, 20193, 20209.7, 20688.6, and 20919.3, Public Contract Code.

§16453. Voluntary Payment of Fees for Compliance Monitoring and Enforcement by Department of Industrial Relations in Lieu of Enforcing Labor Compliance Program.

(a) An Awarding Body that is required by any existing statute to operate or enforce a labor compliance program or to contract with a third party to operate or enforce a labor compliance program may request the Labor Commissioner to provide the services specified in this subchapter in lieu of operating or enforcing its own labor compliance program or contracting with another third party program for the labor compliance program services specified in subchapter 4.

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(b) The fee for services provided pursuant to this section shall be ~~determined in the manner subject to the limitations specified in section 16452 above, including any negotiated reduction, as authorized by subpart (a)(4) of section 16452.~~

(c) Services shall be provided under this section only by agreement, in writing, between the Awarding Body and the Labor Commissioner. The Labor Commissioner may decline to enter into an agreement where the available fee will not provide adequate funding or the Labor Commissioner lacks sufficient staff or resources to provide the services contemplated by this subchapter for the project in question.

(d) Notwithstanding subpart (c) of this section, for any project that requires both the use of a labor compliance program under Public Resources Code Section 75075 and the payment of a fee for compliance monitoring and enforcement by the Department under any other statute, the Labor Commissioner shall enter into an agreement to provide these services upon the request of ~~an the~~ Awarding Body ~~that agrees to pay a fee of no less than one quarter of one percent of the funds provided from the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 [Proposition 84] in addition to the fee that is otherwise due under section 16452(a) above.~~

NOTE: Authority cited: Sections 1771.3, 1771.55 and 1773.5, Labor Code. Reference: Sections 17250.30 and 81704, Education Code; Section 6531, Government Code; Sections 1771.3, 1771.5, 1771.55, 1771.7, 1771.75, 1771.8, 1771.85, 1771.9, 1773.2, and 1773.3, Labor Code; and Sections 6804, 20133, 20175.2, 20193, 20209.7, 20688.6, and 20919.3, Public Contract Code.

§16454. Payment of Fees for Compliance Monitoring and Enforcement by Department of Industrial Relations by an Awarding Body that Elects to Comply with the Requirements of Labor Code Section 1771.55(a).

An Awarding Body that elects to comply with the requirements of Labor Code Section 1771.55(a) for all public works projects that it undertakes shall do all of the following:

- (a) Provide the notices required under section 16451 above.
- (b) Conduct a prejob conference before commencement of the work with contractors and subcontractors listed in the bid or who are required to be identified or prequalified in a Design-

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Build Contract. At the prejob conference applicable federal and state labor law requirements shall be discussed, and copies of suggested reporting forms furnished. A checklist, showing which federal and state labor law requirements were discussed, shall be kept for each conference. A checklist in the format of Appendix A (following section 16421 in subchapter 4 of these regulations) presumptively meets this requirement.

(c) Pay the fee prescribed by section 16452 above.

NOTE: Authority cited: Sections 1771.3, 1771.55 and 1773.5, Labor Code. Reference: Sections 1771.3 and 1771.55, Labor Code.

§16455. Fee Waivers; Exemption from Requirements of this Subchapter.

(a) An Awarding Body that operates an approved Labor Compliance Program for all public works projects in which the Awarding Body participates shall not be subject to the fees, notices, or compliance monitoring provisions of this subchapter, provided that it remains in compliance with the requirements of subchapter 4 (sections 16421 through 16439) and continues to monitor and enforce compliance on all of its projects, including projects that otherwise would be subject to this subchapter.

(b) An Awarding Body that operates an approved Labor Compliance Program only for those public works projects in which the Awarding Body participates that are subject to this subchapter pursuant to subparts (a) or (b) of section 16450 above, shall be exempt from the fees due under section 16452 above and shall not be subject to the compliance monitoring provisions of Article 2 of this subchapter (commencing with section 16460), provided that (1) it has provided the notices required by sections 16423(b) and 16451 above; (2) it remains in compliance with the requirements of subchapter 4 (sections 16421 through 16439); and (3) it continues to monitor and enforce compliance on all projects subject to this subchapter.

(c) Notwithstanding subparts (a) and (b), an Awarding Body shall lose its exemption and be subject to the fees and other requirements of this subchapter if it contracts with a third party to initiate and enforce labor compliance programs on its projects. This subpart shall not be construed as precluding the use of consultants under the following circumstances:

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(1) for legal representation or other licensed professional services that are directly related to the operation of the labor compliance program and that require special expertise that is not available among the Awarding Body's own employed staff;

(2) to augment employed staff in the performance of tasks required under section 16432 above, provided that the consultants exercise no discretionary authority on behalf of the Awarding Body and are under the direct day-to-day control and supervision of Awarding Body employees who are principally and primarily engaged in performing duties on behalf of the labor compliance program;

(3) for the purpose of reviewing program operations or providing other assistance on a purely advisory basis in which the consultant has no authority to act or withhold action on behalf of the Awarding Body nor the authority to compel, withhold, or delay any action by the Awarding Body; or

(4) for any project or purpose that would not be subject to a fee under this subchapter or require the use of an approved labor compliance program under section 16423 above.

(d) An Awarding Body that is exempt from the requirements of this subchapter, as specified in this section, shall be entitled to obtain or withhold the fees specified in section 16452 above for the purpose of funding its own labor compliance monitoring and enforcement activities to the extent authorized by any funding agency and any other applicable law.

(e) The fee waiver provided by this section shall apply automatically to any Awarding Body Labor Compliance Program that has been approved pursuant to sections 16425, 16426, or 16427 above and that has provided notice under section 16423(b) above with respect to whether it intends to enforce or continue enforcing its Labor Compliance Program for all its public works projects or only those projects that are subject to a fee under this subchapter. The Director shall maintain a list of Awarding Body Labor Compliance Programs that are exempt under either subpart (a) or subpart(b) of this section and may post this list on the Department of Industrial Relations' website.

NOTE: Authority cited: Sections 1771.3, 1771.55 and 1773.5, Labor Code. Reference: Sections 17250.30 and 81704, Education Code; Section 6531, Government Code; Sections 1771.3, 1771.5, 1771.55, 1771.7,

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Article 2. Compliance Monitoring by Labor Commissioner
[No changes]

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